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6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8 AT SEATTLE

9 ARTHUR WEST, *et al.*,

10 Plaintiff,

11 v.

12 WEYERHAEUSER COMPANY, *et al.*,

13 Defendants.

No. C08-0687RSM

ORDER

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15 This matter comes before the Court under Local General Rule 8(c). Plaintiff
16 Arthur West has filed a “Motion to Vacate and Transfer” in the above-captioned matter. Dkt.
17 # 35. The Honorable Ricardo S. Martinez, United States District Judge, declined to recuse
18 himself voluntarily and the matter was referred to the Chief Judge. Dkt. # 44. Plaintiff’s motion
19 is therefore ripe for review by this Court.

20 Section 455 of title 28 of the United States Code governs the disqualification of
21 judges. It states in relevant part: “Any justice, judge, or magistrate judge of the United States
22 shall disqualify himself in any proceeding in which his impartiality might reasonably be
23 questioned.” Additionally, 28 U.S.C. § 144, pertaining to judicial bias or prejudice, provides:

24 Whenever a party to any proceeding in a district court makes and files a timely and
25 sufficient affidavit that the judge before whom the matter is pending has a personal
26 bias or prejudice either against him or in favor of any adverse party, such judge
shall proceed no further therein, but another judge shall be assigned to hear such
proceeding. The affidavit shall state the facts and the reasons for the belief that
bias or prejudice exists.

ORDER

1 A judge must recuse himself if a reasonable person would believe that he is unable to be
2 impartial. Yagman v. Republic Insurance, 987 F.2d 622, 626 (9th Cir. 1993). A litigant cannot,
3 however, use the recusal process to remove a judge based on adverse rulings in the pending case:
4 the alleged bias must result from an extrajudicial source. United States v. Studley, 783 F.2d 934,
5 939 (9th Cir. 1986).
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7 Plaintiff argues that Judge Martinez' dismissal of claims against certain
8 defendants, his failure to address plaintiff's motions to amend and stay proceedings, and his
9 refusal to acknowledge plaintiff's disability reflect bias "against citizens and disabled persons
10 appearing in court." Dkt. # 35 at 1. As a threshold matter, the Court must determine whether
11 this motion for recusal is timely. Molina v. Rison, 886 F.2d 1124, 1131 (9th Cir. 1989) ("It is
12 well established that a motion to disqualify or recuse a judge under 28 U.S.C. § 144 [as well as]
13 ... § 455 must be made in a timely fashion."). Allowing litigants to delay raising allegations of
14 bias would result in a waste of judicial time and resources (see In re International Business
15 Machines Corp., 618 F.2d 923, 933 (2d Cir. 1980)) and a heightened risk that litigants are using
16 recusal motions for strategic purposes (see Ex Parte American Steel Barrel Co. and Seaman, 230
17 U.S. 35, 44 (1913)).
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20 Plaintiff filed this motion to recuse only after two dispositive orders were entered
21 in this matter. The risk that plaintiff is using allegations of bias to overturn a decision of the
22 court is therefore considerable: in effect, plaintiff is seeking to remove Judge Martinez from this
23 case because of his performance while presiding over this matter. Because a judge's conduct in
24 the context of pending judicial proceedings does not constitute the requisite bias under § 144 or
25 § 455 if it is prompted solely by information that the judge received in the context of the
26 performance of his duties, bias is almost never established simply because the judge issued an

1 adverse ruling.

2 In order to overcome this presumption, plaintiff would have to show that facts
3 outside the record drove decisions or that the presiding judicial officer's decisions were so
4 irrational that they must be the result of prejudice. Plaintiff does not allege any facts outside the
5 record that improperly influenced the decisions in this matter. Having reviewed the record in the
6 above-captioned matter, the Court finds that Judge Martinez' procedural rulings are well within
7 his discretion and, while debatable, are not irrational. The dismissal of plaintiff's claims against
8 Law Lyman Daniel Kamerrer and Bogdanovich, PS was the result of plaintiff's failure to
9 respond to defendant's motion to dismiss in a timely fashion. Four days after the motion was
10 noted for consideration, plaintiff belatedly asked for a continuance of the motion or the
11 voluntary dismissal of the complaint because he was temporarily disabled and could not respond
12 adequately. Dkt. # 28. Judge Martinez determined that Law Lyman's motion had merit, that
13 plaintiff had failed to timely oppose the motion, and that plaintiff is a competent litigator, despite
14 his *pro se* status, and would be held to the governing rules of procedure. Dkt. # 33 at 2.
15 Whether to excuse a breach of the Local Rules of Civil Procedure or to extend the time in which
16 to respond are within the discretion of the presiding judicial officer, especially when the request
17 for an extension is made after the time for response has already expired. The dismissal of
18 plaintiff's claims against Law Lyman reflect the reasonable resolution of the issues presented
19 based on the record. If plaintiff believes that Judge Martinez' rejection of his untimely response
20 was an abuse of discretion under the law of the Ninth Circuit, that argument must be made on
21 appeal rather than in a motion to recuse.
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25 Plaintiff also takes issue with the fact that Judge Martinez has not ruled upon his
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1 motion to amend or his request for a stay. Plaintiff's request for leave to amend his complaint
2 was contained in a document titled "Plaintiff's Motion to Reconsider." It was not accompanied
3 by a proposed amended complaint and only vaguely hinted at the nature of the proposed
4 amendment. Dkt. # 23 (plaintiff expressed confidence that newly discovered documents would
5 show that defendants misrepresented facts regarding a Weyerhaeuser project at the Port of
6 Olympia). Combining disparate requests for relief in a single document and failing to identify
7 the new claims made this "motion" easy to overlook and virtually invisible in our electronic
8 docketing system. The oversight, while unfortunate, is understandable. Plaintiff's bald assertion
9 that the absence of a ruling on the request to amend was the result of Judge Martinez' dislike of
10 plaintiff or his disability is nothing but speculation.
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13 Contrary to plaintiff's assertion, Judge Martinez did acknowledge and address his
14 motion to stay and his alleged disability. The motion and the claim of disability were found
15 timely as to two of the pending dispositive motions, but were deemed deficient because the facts
16 alleged were not supported by admissible evidence, such as a sworn declaration. Plaintiff was
17 given the opportunity to rectify the noted deficiencies and provided a declaration on January 5,
18 2009 (after the deadline imposed by the court). Because plaintiff challenged Judge Martinez'
19 ability to preside over this matter in the interim, no further action on plaintiff's motion for stay
20 has been taken.
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22 At most, plaintiff has shown that Judge Martinez has not been willing to excuse
23 procedural defects in his submissions. Plaintiff has identified no error of law or fact, much less a
24 determination that was so outlandish as to give rise to an inference of bias. Nor does the
25 allegation that Judge Martinez is biased against disabled litigants require recusal. The allegation
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is based on nothing more than the fact that Judge Martinez ruled against plaintiff in this matter. Assuming, for purposes of this motion, that the presiding judicial officer has ruled against disabled litigants in the past or has granted extensions of time to non-disabled litigants, there is no reason to suspect that such rulings were based on anything other than the merits of the cases before him. Decisions based on the merits generally cannot support a recusal motion (Studley, 783 F.2d at 939), and plaintiff's wholly unsupported allegations of a pervading bias are insufficient to warrant transfer.

Having reviewed plaintiff's motion and the remainder of the record, the Court finds that Judge Martinez' impartiality cannot reasonably be questioned. There being no evidence of bias or prejudice, plaintiff's motion for recusal is **DENIED**.

Dated this 26th day of January, 2009.

Robert S. Lasnik
Robert S. Lasnik

Robert S. Lasnik
Chief Judge, United States District Court